

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK PARTER,

CIVIL CASE NO. 06-10561

Plaintiff,

v.

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

ANTHONY VALONE, *et al.*,

Defendants.

/

ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM ORDER

On October 3, 2006, Magistrate Judge Mona K. Majzoub issued a Report and Recommendation recommending that prisoner and *pro se* Plaintiff Parter's complaint be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). The Report and Recommendation also notified the parties that objections, if any, had to be filed within ten days of service of the Report and Recommendation. The Court did not receive any timely objections from either party. Therefore, on October 30, 2006, this Court accepted and adopted as the order of this Court the Report and Recommendation of Magistrate Judge Majzoub and dismissed Plaintiff's complaint.

Plaintiff Parter now seeks relief from that order, claiming that he did file timely objections, even though the Court failed to receive them. Plaintiff provides prison documentation purportedly demonstrating that he did in fact mail objections to the Report and Recommendation in a timely manner. Plaintiff has also included a copy of the objections he claims to have timely sent to the Court.

The Federal Rules of Civil Procedure dictate the standard of review for a Report and

Recommendation. The standard differs depending on whether or not any objections have been filed. In the present case, because the Court initially concluded that neither party had filed objections, the Court was not required to conduct any review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). However when a party has filed objections, Federal Rules of Civil Procedure 72(b) states, in relevant part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b).

De novo review in these circumstances requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's report and recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the magistrate judge. *See Lardie*, 221 F. Supp. 2d at 807.

In the present case, the Court need not now make a determination as to the validity of Plaintiff's allegations with respect to the timely mailing of his objections because the Court has now conducted a *de novo* review of those portions of the Report and Recommendation to which Plaintiff

has ostensibly raised objections. After such a review, the Court finds that the Report and Recommendation was factually correct and legally sound.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's "Motion for Relief from Order" [docket entry #18] is denied.

SO ORDERED.

Dated: September 10, 2007

s/Paul V. Gadola

HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on September 10, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Kevin M. Thom, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Frank Parter.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager
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